

HOUSE \_\_\_\_\_ AMENDMENT NO. \_\_\_\_\_

Offered By \_\_\_\_\_

AMEND House Committee Substitute for Senate Bill No. 628, Page 38, Section 488.5375, Line 10, by inserting after all of said section and line, the following:

“491.075. 1. A statement made by a child under the age of fourteen, or a vulnerable person, relating to an offense under chapter 565, 566, 568 or 573, performed [with or on a child] by another, not otherwise admissible by statute or court rule, is admissible in evidence in criminal proceedings in the courts of this state as substantive evidence to prove the truth of the matter asserted if:

(1) The court finds, in a hearing conducted outside the presence of the jury that the time, content and circumstances of the statement provide sufficient indicia of reliability; and

(2) (a) The child or vulnerable person testifies at the proceedings; or

(b) The child or vulnerable person is unavailable as a witness; or

(c) The child or vulnerable person is otherwise physically available as a witness but the court finds that the significant emotional or psychological trauma which would result from testifying in the personal presence of the defendant makes the child or vulnerable person unavailable as a witness at the time of the criminal proceeding.

2. Notwithstanding subsection 1 of this section or any provision of law or rule of evidence requiring corroboration of statements, admissions or confessions of the defendant, and notwithstanding any prohibition of hearsay evidence, a statement by a child when under the age of fourteen, or a vulnerable person, who is alleged to be victim of an offense under chapter 565, 566, 568 or 573 is sufficient corroboration of a statement, admission or confession regardless of whether or not the child or vulnerable person is available to testify regarding the offense.

3. A statement may not be admitted under this section unless the prosecuting attorney makes known to the accused or the accused's counsel his or her intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the accused or the accused's counsel with a fair opportunity to prepare to meet the statement.

4. Nothing in this section shall be construed to limit the admissibility of statements, admissions or confessions otherwise admissible by law.

5. For the purposes of this section, "vulnerable person" shall mean a person who, as a result of an inadequately developed or impaired intelligence or a psychiatric disorder that materially affects ability to function, lacks the mental capacity to consent, or whose developmental level does not exceed that of an ordinary child of fourteen years of age.”; and

Further amend said bill, Page 57, Section 559.105, Line 28, by inserting after all of said section and line, the following:

“565.072. 1. A person commits the crime of domestic assault in the first degree if he or she attempts to kill or knowingly causes or attempts to cause serious physical injury to a family or household member, including any child who is a member of the family or household, or an adult who is or has been in a continuing social relationship of a romantic or intimate nature with the actor, as defined in section 455.010.

2. Domestic assault in the first degree is a class B felony unless in the course thereof the actor inflicts serious physical injury on the victim or has previously pleaded guilty to or been found guilty of committing this crime, in which case it is a class A felony.

565.073. 1. A person commits the crime of domestic assault in the second degree if the act involves a family or household member, including any child who is a member of the family or household, or an adult who is or has been in a continuing social relationship of a romantic or intimate nature with the actor, as defined in section 455.010, and he or she:

(1) Attempts to cause or knowingly causes physical injury to such family or household member by any means, including but not limited to, by use of a deadly weapon or dangerous instrument, or by choking or strangulation; or

(2) Recklessly causes serious physical injury to such family or household member; or

(3) Recklessly causes physical injury to such family or household member by means of any deadly weapon.

2. Domestic assault in the second degree is a class C felony.

565.074. 1. A person commits the crime of domestic assault in the third degree if the act involves a family or household member, including any child who is a member of the family or household, or an adult who is or has been in a continuing social relationship of a romantic or intimate nature with the actor, as defined in section 455.010 and:

(1) The person attempts to cause or recklessly causes physical injury to such family or household member; or

(2) With criminal negligence the person causes physical injury to such family or household member by means of a deadly weapon or dangerous instrument; or

(3) The person purposely places such family or household member in apprehension of immediate physical injury by any means; or

(4) The person recklessly engages in conduct which creates a grave risk of death or serious physical injury to such family or household member; or

(5) The person knowingly causes physical contact with such family or household member knowing the other person will regard the contact as offensive; or

(6) The person knowingly attempts to cause or causes the isolation of such family or household member by unreasonably and substantially restricting or limiting such family or household member's access to other persons, telecommunication devices or transportation for the purpose of isolation.

2. Except as provided in subsection 3 of this section, domestic assault in the third degree is a

1 class A misdemeanor.

2 3. A person who has pleaded guilty to or been found guilty of the crime of domestic assault in the  
3 third degree more than two times against any family or household member as defined in section 455.010,  
4 or of any offense committed in violation of any county or municipal ordinance in any state, any state law,  
5 any federal law, or any military law which, if committed in this state, would be a violation of this section,  
6 is guilty of a class D felony for the third or any subsequent commission of the crime of domestic assault.  
7 The offenses described in this subsection may be against the same family or household member or against  
8 different family or household members.”; and

9  
10 Further amend said bill and page, Section 566.083, Line 23, by inserting after all of said section and line,  
11 the following:

12  
13 “568.060. 1. [A person commits the crime of abuse of a child if such person:

14 (1) Knowingly inflicts cruel and inhuman punishment upon a child less than seventeen years old;

15 or

16 (2) Photographs or films a child less than eighteen years old engaging in a prohibited sexual act  
17 or in the simulation of such an act or who causes or knowingly permits a child to engage in a prohibited  
18 sexual act or in the simulation of such an act for the purpose of photographing or filming the act.

19 2. As used in this section "prohibited sexual act" means any of the following, whether performed  
20 or engaged in either with any other person or alone: sexual or anal intercourse, masturbation, bestiality,  
21 sadism, masochism, fetishism, fellatio, cunnilingus, any other sexual activity or nudity, if such nudity is to  
22 be depicted for the purpose of sexual stimulation or gratification of any individual who may view such  
23 depiction.

24 3. Abuse of a child is a class C felony, unless:

25 (1) In the course thereof the person inflicts serious emotional injury on the child, or the offense is  
26 committed as part of a ritual or ceremony in which case the crime is a class B felony; or

27 (2) A child dies as a result of injuries sustained from conduct chargeable pursuant to the  
28 provisions of this section, in which case the crime is a class A felony.

29 4. As used in this section, the word "fetishism" means a condition in which erotic feelings are  
30 excited by an object or body part whose presence is psychologically necessary for sexual stimulation or  
31 gratification] As used in this section, the following terms shall mean:

32 (1) "Abuse", the infliction of physical, sexual, or mental injury against a child by any person  
33 eighteen years of age or older. For purposes of this section, abuse shall not include injury inflicted on a  
34 child by accidental means by a person with care, custody, or control of the child, or discipline of a child  
35 by a person with care, custody, or control of the child, including spanking, in a reasonable manner;

36 (2) "Abusive head trauma", a serious physical injury to the head or brain caused by any means,  
37 including but not limited to shaking, jerking, pushing, pulling, slamming, hitting, or kicking;

38 (3) "Mental injury", an injury to the intellectual or psychological capacity or the emotional  
39 condition of a child as evidenced by an observable and substantial impairment of the ability of the child to  
40 function within his or her normal range of performance or behavior;

1       (4) "Neglect", the failure to provide, by those responsible for the care, custody, and control of a  
2 child under the age of eighteen years, the care reasonable and necessary to maintain the physical and  
3 mental health of the child, when such failure presents a substantial probability that death or physical  
4 injury or sexual injury would result;

5       (5) "Physical injury", physical pain, illness, or any impairment of physical condition, including  
6 but not limited to bruising, lacerations, hematomas, welts, or permanent or temporary disfigurement and  
7 impairment of any bodily function or organ;

8       (6) "Serious emotional injury", an injury that creates a substantial risk of temporary or permanent  
9 medical or psychological damage, manifested by impairment of a behavioral, cognitive, or physical  
10 condition. Serious emotional injury shall be established by testimony of qualified experts upon the  
11 reasonable expectation of probable harm to a reasonable degree of medical or psychological certainty;

12       (7) "Serious physical injury", a physical injury that creates a substantial risk of death or that  
13 causes serious disfigurement or protracted loss or impairment of the function of any part of the body.

14       2. A person commits the offense of abuse or neglect of a child if such person knowingly causes a  
15 child who is less than eighteen years of age:

16       (1) To suffer physical or mental injury as a result of abuse or neglect; or

17       (2) To be placed in a situation in which the child may suffer physical or mental injury as the  
18 result of abuse or neglect.

19       3. A person commits the offense of abuse or neglect of a child if such person recklessly causes a  
20 child who is less than eighteen years of age to suffer from abusive head trauma.

21       4. A person does not commit the offense of abuse or neglect of a child by virtue of the sole fact  
22 that the person delivers or allows the delivery of child to a provider of emergency services.

23       5. The offense of abuse or neglect of a child is a class C felony, without eligibility for probation  
24 or parole until the defendant has served no less than one year of such sentence, unless the person has  
25 previously been found guilty of a violation of this section or of a violation of the law of any other  
26 jurisdiction that prohibits the same or similar conduct or the injury inflicted on the child is a serious  
27 emotional injury or a serious physical injury, in which case abuse or neglect of a child is a class B felony,  
28 without eligibility for probation or parole until the defendant has served not less than five years of such  
29 sentence.

30       6. Notwithstanding subsection 5 of this section to the contrary, the offense of abuse or neglect of  
31 a child is a class A felony, without eligibility for probation or parole until the defendant has served not  
32 less than fifteen years of such sentence, if:

33       (1) The injury is a serious emotional injury or a serious physical injury;

34       (2) The child is less than fourteen years of age; and

35       (3) The injury is the result of sexual abuse as defined under section 566.100 or sexual  
36 exploitation of a minor as defined under section 573.023.

37       7. The circuit or prosecuting attorney may refer a person who is suspected of abuse or neglect of  
38 a child to an appropriate public or private agency for treatment or counseling so long as the agency has  
39 consented to taking such referrals. Nothing in this subsection shall limit the discretion of the circuit or  
40 prosecuting attorney to prosecute a person who has been referred for treatment or counseling pursuant to

1 this subsection.

2 8. Nothing in this section shall be construed to alter the requirement that every element of any  
3 crime referred to herein must be proven beyond a reasonable doubt.

4 9. Discipline, including spanking administered in a reasonable manner, shall not be construed to  
5 be abuse under this section.”; and

6  
7 Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.